



## **MINUTES**

### **PLANNING & ZONING BOARD MEETING**

**February 27, 2007  
7:00- 8:50 p.m.**

The Trinity Planning Board held their February 27, 2007 Regular Planning and Zoning Board Meeting at Trinity City Hall, 6701 NC Highway 62, Trinity. A quorum was present.

**PLANNING BOARD MEMBERS PRESENT:** Chairman Sikes, Members Vernel Gibson, Scott Norman, David Albertson, Melvin Patterson, Linda Gantt, Buddy Maness.

**PLANNING BOARD MEMBERS ABSENT:** JR Ewings.

**OTHERS PRESENT:** City Council Liaison Karen Bridges, City Manager, Ann Bailie; Fran Andrews, Mayor; Planning/Zoning Administrator/ Code Enforcement Officer, Adam Stumb; Assistant City Clerk/Special Project Coordinator Diana Schreiber; Guests: Bob Wilhoit and Allen Pugh from Gavin, Cox, Pugh & Wilhoit Attorneys; Gary Loflin; Council Member Bob Labonte; Robin Russell and members of the audience.

**ITEM 1. Call to Order**

Chairman Sikes called the February 27, 2007 Meeting to order at 7:00 p.m. and welcomed those in attendance.

**Item 2. Pledge of Allegiance**

Chairman Sikes lead the Pledge of Allegiance.

**Item 3. Invocation**

Member Vernel Gibson gave the invocation.

**Item 4. Approval of Minutes**

*Chairman Sikes called for any changes, corrections, or additions to the January 23, 2007 Minutes. Hearing none, Member Maness made a motion to accept the January 23, 2007 Minutes as written, seconded by Member Norman and approved unanimously by all Planning Board Members present.*

**Item 5. Public Comments Section**

*Any comments not listed on the Agenda were requested by Chairman Sikes. Hearing none, Chairman Sikes closed the Public Comments Section. No public comments made.*

**Item 6.                    Subdivision Sketch Review**

**a.     Bellawood Subdivision**

Planner Stumb summarized the subdivision. A copy of the plan's initial sketch is in the packet. The subdivision consists of thirty acres with 57 lots. Each lot is expected to have minimum of 12,000 square feet, with 30 foot front setbacks and 25 foot back setbacks. Back section of development will occur later. Sewer for Colonial Heights project runs along the creek within Bellawood. NC Hwy. 62 improvements including NCDOT driveway permits have been applied for. The next step by Board will be to define improvements. Site plan lots conform to city subdivision ordinance. Cul-de-sac sizes will be re-reviewed by Planning and city engineering.

Mr. Loflin spoke regarding the ingress/egress of lots along Collette Farm Road to the Bellawood Subdivision. Due to the steep grade, rerouting of the entrance is planned. Two homeowners will be notified of the re-routing of their driveways through the subdivision. After the re-routing, the portion of Collette Farm Road will be taken over by adjacent property owners. Attorney Wilhoit mentioned that according to General Statutes, road takeovers by adjacent owners extend to the center line. Mr. Loflin will request NCDOT approval to eliminate the Collette Farm entrance for safety reasons. Lot prices are expected to start at \$40,000. Typically, home prices are based on ratio of 5:1; with a lot price of \$40,000, the estimated home price is \$200,000. Homes will not have square footage minimum; Mr. Loflin will approve of all sketch plans.

*Chairman Sikes asked for further questions, hearing none, Member Patterson made a motion to proceed; Member Maness seconded the motion and was approved by all Planning Board members present.*

**b.            Carpe Diem Subdivision**

Carpe Diem Subdivision is a relatively small subdivision consisting of six homesites on less than ten acres along a private road, Carpe Diem Drive. Development emerged from a rezoning request from last year of RA to R40. Homeowner association is expected to maintain the private street. Future easements will be acquired now for future sewer installations; engineer is requested by members to locate the easements in the siteplan. The translation of Carpe Diem from Latin to English is *seize the day*.

**c.            Carpe Diem Commercial**

Planner Stumb presented a general plan for commercial development consisting of fifteen acres divided into seven lots; part of a rezoning along NC Hwy. 62 conducted over a year ago. Improvements along Hwy. 62 will be required to handle traffic in/out of development including turnlanes.

Mr. Loflin advised that the buildings will have brick façades. Mr. Loflin continued explaining that two autonomous sites are planned near the front of siteplan. Flex space is located on five lots at the back of the siteplan for small office type businesses or retail. A divider median will center each parking lot.

*Chairman Sikes asked for further questions, hearing none, Member Norman made a motion to proceed; Member Gibson seconded the motion and was approved by all Planning Board members present.*

**Item 7.                    Rezoning and Quasi Judicial Hearings: Procedure Review  
                              Guests: Attorneys Bob Wilhoit and Allen Pugh**

Planner Stumb welcomed and introduced Attorneys Wilhoit and Pugh who were asked to review the relevance of quasi judicial hearings in zoning procedures. Zoning decisions are legislative. Quasi judicial decisions are based on evidence received at hearings. According to NC State Legislature, Council must

consider the zoning classifications contained in the City's land use plan when making rezoning decisions. If Council decides NOT to follow the classifications as specified within the land-use plan, then they must stipulate the reason for the deviation from the land-use plan. Inconsistencies made in rezoning decisions without explanation result in arbitrary and capricious decision-making; this decision can be overruled in the court of law.

#### Four Findings Required before Granting a Special Use Permit

According to a 1964 case from Chapel Hill, Humbell Oil & Refining, When property is zoned correctly under permitted uses for the zoning classification, a special use permit enables the decision maker (Council) to avoid damaging the community. The special use permit applicant must show evidence that the request satisfies four findings:

- 1) the special use won't materially endanger the public health and safety (usually traffic)
- 2) the use meets all the required standards set by the municipality
- 3) the general harmony is maintained to the adjoining properties, and
- 4) the use won't substantially injure the property values of adjoining properties.

Stipulation #4 is most important. Normally, if #4 is acceptable, then #3 goes along tacitly with the decision. If property is zoned in a certain way, the harmony finding of the special use permit is automatically applied.

#### Purpose of P&Z Board

Special use permit proceedings are not comparable to rezonings. The quasi-judicial purpose of PZ Board is to determine if competent evidence has been presented by applicant, evaluate arguments based on common sense and judge if the special use permit would substantially diminish the values of adjoining properties. The Board is not allowed to turn down a permit because of emotional reasons, dislike of a project or hearsay. Individuals are under sworn testimony similar to judicial proceedings. Opposition must present evidence of endangerment to public safety to overcome the argument for the applicant's special use permit.

#### Recourse by an Applicant

Traffic argument made by opposition must be rationally decided by the Board having final authority on deciding a special use permit request (the City Council, in Trinity). If the Board denies a special use permit, the applicant can, within thirty days, file the case with the Superior Court who will respond in three ways:

1. Superior Court will determine that the Council had a rational basis for denying the special use permit and sustain Council's decision.
2. Court will determine that Council's decision was irrationally based on emotional evidence and will reverse Council's decision thereby granting the permit.
3. Court will review case. If Court cannot determine why the decision was made, the case will be returned to Council for a decision.

Ultimately, if you don't want a certain type of structure in your municipality, you should not allow it in your zoning categories. Pugh discussed *Clark v. City of Asheboro: generalized fears do not represent competent evidence to deny a special use permit. You cannot treat special use permits the same as a rezoning request. You must have competent evidence to overcome the applicant's request. Otherwise, the Council's decision is arbitrary, capricious and subject to overturning by the Superior Court.*

Comparison of legislative (rezonings) v. quasi-judicial proceedings (special use & variances). Beware of arbitrary and capricious decisions not based on the land use plan.

In quasi-judicial proceedings, neither the Planning Board or Council members are permitted to discuss the special use permit application prior to the meeting. Do not discuss any of the circumstances with others. A decision must be made the night of the special use presentation based solely on the evidence presented at the hearing. You are not permitted to receive any information from others about the special use permit. If you have heard information, stop the individual from talking to you about it. Disclose your conversation with the Board at the special use permit hearing; it is not necessary to reclusify yourself from the proceeding. Council is only entitled to hear your recommendation from the Planning Board.

Pugh's Recommendation: Trinity's current system is redundant. Either Council OR the Planning Board should decide on the special use permit hearing; not both groups separately and sequentially. P&Z Board's purpose as a recommending body to Council opens the door for redundancy and legal questions. Refer to Wilhoit's handout comparing legislative and quasi judicial proceedings. For legislative decisions (rezonings), the Planning Board is a recommending body; the Council is allowed to disapprove a rezoning request, but if so, written explanation must be provided regarding the Council's reasoning. If the reasoning is not provided, then the Council is acting on a capricious basis, subject to appeal in Superior Court.

Public opinion is permissible in rezoning hearings, not in special use hearings.  
Board members are not open to suit when special use permits are denied, based on the General Statutes.  
Basing decisions on hearsay, not fact, can be overturned judicially. Traffic argument can be irrelevant in special use permit case without a professional advocating and providing evidence in favor or against. Board must judge evidence.

## **1. Comments from the Board**

Member Patterson asked if the P&Z Board was the deciding body on special use permits or the Council.

Current ordinance allows Planning Board to be an advisory board to City Council. Planning Board can make recommendations to Council but Council must not abide by the Board's decision. Manager Bailie will present this issue to Council for discussion. Attorney Pugh emphasized that special use permits gives governing board the opportunity to make sure that specific uses are compatible with existing land use by imposing additional conditions. Only in extreme cases can special use permits be turned down. Attorney Pugh fielded questions about the applicability of special use permits with zoning versus conditional zoning regulations. Developers must abide by zoning regulations and categories prescribed in the land use plan. Developers are required to conform to state and local regulations. Manager Bailie asked Pugh for clarification on a conditional zoning request that required a special use permit; can the city apply additional conditions as long as the applicant approves of the conditions? Attorney Pugh responded that permissible contract law stipulates that the city can offer suggestions but cannot dictate trade-off conditions for rezonings.

*Without further comments from the Board, Chairman Sikes called for Comments from the Staff.*

## **2. Comments from Staff**

Mr. Stumb stated the attached memo details council's decision. Manager Bailie announced the 'Carolina Yards and Neighborhoods' workshops to be held in Asheboro in March 2007.

### **ITEM 10. Adjournment**

*With no other business to discuss, Chairman Sikes called for a motion to adjourn the February 27, 2007 Planning/Zoning Regular Meeting at 8:50 pm; Planning member Norman made the motion to adjourn, seconded by Planning Member Patterson, and approved unanimously by all Planning Members present.*